

REMARKS

Favorable reconsideration and allowance of this application are requested.

At the outset, applicants hereby affirm the election of claims 1-8 for prosecution herein. Claims 9-16 directed to patentably distinct inventions non-elected for prosecution have been cancelled, but such cancellation has been effected without prejudice to the applicants' rights to file a divisional application with respect to such subject matter.¹

Clarifications have been proposed for the Abstract so as to address the Examiner's objection thereto. In addition, an amended title commensurate with the claimed invention herein has been provided.

The specification has been amended on page 3 thereof so as to update the status of the now patented commonly owned Waddington et al application of record herein as USP 6,447,703.

By way of the amendment instructions above to the claims, the alpha-crystallinity of the BCF achieved by the present invention which was expressed in original claim 2 has now been incorporated into claim 1 and as such that expression has been deleted from claim 2 as redundant. In addition, nylon has been recited as the polymeric material in claim 1 and as such claims 6-8 have been cancelled as redundant.

Claims 1-5 therefore remain pending in amended form for which favorable reconsideration and allowance is solicited. As will become evident from the following discussion, all pending claims herein are in condition for allowance.

¹ It is noted in this regard that the patentably distinct invention of claims 9-13 has already issued as U.S. Patent No. 6,635,345, a copy of which is appended hereto and noted on an appropriate form PTO-1449.

I. Response to 35 USC §112 Issues

Original claims 1-8 attracted a rejection under 35 USC §112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. In this regard, the Examiner asserts that such a skilled person would not know what constitutes a "sufficiently low fluid jet velocity" and/or a "sufficiently high fluid jet temperature". Applicants respectfully disagree.

The applicants have, of course, provided a definitive example whereby a so-called "low efficiency" jet and higher duo temperature were employed in comparison to a conventional jet and higher duo temperature. That the claims present in the subject application define the jet and temperature functionally does not in and of itself render such claims defective under 35 USC §112.² Specifically, where the recited functionality achieves a definitive result, it has been held that such a claim is not objectionable under 35 USC §112.³

The pending claims herein are therefore based on a fully enabling disclosure. Specifically, based on the definitive example present in the originally filed specification, those skilled in this art would not be presented with any undue experimentation to achieve the recited results – namely, alpha-crystalline contents in the BCF of at least about 45% and a yarn skein shrinkage of less than about 0.50 inch.

Withdrawal of the issues raised under 35 USC §112, first paragraph is therefore in order.

² See, *In re Hallman*, 210 USPQ 609 (CCPA 1981).

³ *In re Watson*, 186 USPQ 11, 20 (CCPA 1975).

II. Response to 35 USC §103 Issues

The only issue remaining to be resolved in this application is the Examiner's assertion that original claims 1-8 are "obvious" and hence unpatentable over USP 6,447,703 to Waddington.⁴

Applicants note in this regard that the subject application and the Waddington patent are commonly owned by Honeywell International Inc by virtue of an assignment recorded in the U.S. Patent and Trademark Office on May 22, 2003 at Reel 013835 and Frame 0756. Moreover, it is noted that the Waddington patent can only rise to the status of "prior art" under 35 USC §102(e).

Therefore, since the subject application was filed subsequent to the effective date of November 29, 1999 for 35 USC §103(c), and since the Waddington patent can only rise to "prior art" status against the subject invention under 35 USC §102(e), then 35 USC §103(c) disqualifies Waddington as a reference against the claims pending herein.

Withdrawal of the rejection of record based on Waddington and early passage of the subject application to issuance are therefore solicited.

III. Conclusion

Every effort has been made to advance prosecution of this application to allowance. Therefore in view of the amendments and remarks presented herewith, it is suggested that this application is in condition for prompt allowance and Official Notice to that effect is solicited.

⁴ The rejection advanced under 35 USC §102(b) against claims 1, 5 and 6 has been mooted due to the amendments to claim 1 above to define an alpha-crystallinity of at least about 45% and to specify that the BCF filaments are formed of nylon (as compared to the polyester filaments disclosed in Chuah (USP 6,113,825).

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Should any small matter remain outstanding, however, the Examiner is encouraged to telephone the applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

Respectfully submitted,

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